

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 695, AFL-CIO and T. B. Wood's Sons Company. Case 5-CB-6599

August 20, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The questions presented here are whether the judge: (1) correctly denied the Respondent's motion to dismiss for the alleged failure of the General Counsel to comply with a prehearing disclosure order; and (2) correctly found that the Respondent violated Section 8(b)(1)(A) by numerous acts of misconduct at or near a strikers' picket line.¹

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 695, AFL-CIO, Chambersburg, Pennsylvania, its officers, agents, and representatives, shall take the action set forth in the Order.

¹ On February 17, 1993, Administrative Law Judge Richard A. Scully issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief in response to the Respondent's exceptions.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We find no need to pass on the issue whether the June 27, 1990 incident involving pickets following employee Curtis Culbertson violated Sec. 8(b)(1)(A). A finding of unlawful conduct would merely be cumulative in light of several other findings based on similar conduct and would not affect the remedy appropriate for such unfair labor practices.

Member Devaney notes that while there was evidence in this case that some pickets who were involved in some of the most egregious incidents thereafter did not appear at the picket line, he views the situation here as different from that in *Teamsters Local 812 (Pepsi-Cola Newburg)*, 304 NLRB 111 (1991), where the Respondent took action to keep the offending picket off the picket line after it became aware of the incident there.

James P. Lewis, Esq., for the General Counsel.
William T. Josem, Esq., of Philadelphia, Pennsylvania, for the Respondent.

Michael A. Taylor and Celeste M. Wasielewski, Esqs., of Washington, D.C., for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD A. SCULLY, Administrative Law Judge. Upon a charge filed by T. B. Wood's Sons Company (the Employer) on June 27, 1990, and an amended charge filed on April 26, 1991, the Regional Director for Region 5, National Labor Relations Board (the Board) issued a complaint on September 28, 1990, and amended complaints on July 29 and August 23, 1991, alleging that International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 695, AFL-CIO (the Respondent) committed certain violations of Section 8(b)(1)(A) of the National Labor Relations Act (the Act). The Respondent filed timely answers denying that it had committed any violation of the Act.

A hearing was held in Chambersburg, Pennsylvania, on February 10 through 14 and March 24 and 25, 1992, at which all parties were given a full opportunity to participate, to examine and cross-examine witnesses, and to present other evidence and argument. Briefs submitted on behalf of the parties have been given due consideration. On the entire record and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

At all times material, the Employer was a Pennsylvania corporation with an office and place of business in Chambersburg, Pennsylvania, engaged in the business of manufacturing industrial equipment parts. During the 12 months preceding September 28, 1990, a representative period, the Employer, in the course and conduct of its business operations, purchased and received at its Chambersburg facility goods and materials valued in excess of \$50,000 directly from points located outside the Commonwealth of Pennsylvania. The Respondent admits, and I find, that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Respondent's Motion to Dismiss

At the commencement of the hearing, the Respondent moved to dismiss the complaint on the grounds that the General Counsel had failed to comply with the order issued on November 20, 1990, by Associate Chief Administrative Law Judge John M. Dyer disposing of the Respondent's motion for a bill of particulars. It has raised the issue again in its posttrial brief. In its motion for a bill of particulars, the Respondent alleged, *inter alia*, that the allegations in paragraph 6(a) through (x) of the complaint did not constitute a clear and concise statement of the acts alleged to be unfair labor practices and did not state the names of the agents of the Respondent who engaged in such acts. In response, counsel for the General Counsel argued that the allegations in the com-

plaint were sufficient and stated that the names were not presently known. Judge Dyer's order states that "the allegations of the complaint as to what allegedly occurred are clear and sufficiently inform Respondent of what took place." The order also states that the General Counsel is to provide the Respondent with "the identity of those who performed or took part in the acts" when and if such information becomes known. On the morning the hearing opened, counsel for the Respondent submitted the motion to dismiss and stated that, to his knowledge, the Respondent had never been informed of the names of those alleged to have been involved in the picket line incidents referred to in the complaint. In response, counsel for the General Counsel stated that the Respondent had been provided with all of the names of the persons that were known to him. He submitted a copy of a letter from a Board investigator, Patricia Hickey, to the Respondent's counsel, William Josem, dated June 21, 1991, in which she forwarded 13 pages of notes summarizing the information in the affidavits of witnesses describing the incidents occurring between August 1990 and June 1991, including, the names of those involved in the incidents. Also submitted was a copy of a letter from Hickey to Josem representing that, on August 1, 1990, she had orally provided similar information concerning the incidents occurring prior to that time, including, the names of those involved, to the Respondent's counsel at the time, Louis Agre.

I found no reason to doubt the representations of counsel for the General Counsel that all of the names of the participants in the incidents alleged in the complaint that were known to him were given to the Respondent's counsel. Nor was it, as the Respondent contends, "incumbent upon counsel for the General Counsel to prove compliance once the issue was raised by Union counsel." The Respondent's motion was not supported by any affidavits or other evidence. As the moving party, it was the Respondent's responsibility to present evidence to establish that it had not been given the names of the alleged perpetrators as directed in Judge Dyer's order. In the absence of such evidence, there was no issue of fact to be resolved and no reason to accept the representations of the Respondent's counsel over those of counsel for the General Counsel. Moreover, the Respondent's motion and argument seeks to focus on the timing and mechanics of how the information was provided to it rather than the real issue which is whether or not it received the information. It has not established that it was not furnished with the names of those involved in the incidents alleged in complaint paragraph 6(a) through (x) known to the General Counsel. From all that appears, those names were given to Agre on August 1, 1990. At the hearing, Josem did not dispute this, he simply said he did not know it to be so. (Tr 15.)¹ Given the fact that, subsequently, counsel for the Respondent was voluntarily provided with the known names of those involved in other incidents which were alleged in the amended complaint, I found no basis to conclude that counsel for the General Counsel had not made a good-faith effort to comply with

¹ In his posttrial brief (p. 45), counsel for the Respondent asserted that the names of two picketers identified in an affidavit taken by the NLRB in July, 1990, "were not named in counsel for the General Counsel's supposed August 1 oral recitation." While there is no evidence in the record to establish whether this statement is true or not, it is an acknowledgement that information was provided to the Respondent and that Josem had access to it.

the order.² Further, there was no evidence presented from which I could conclude that the Respondent has been prejudiced. More than 6 months elapsed between the date of the Respondent's answer to the amended complaint and the date of the hearing without any question being raised as to the adequacy of the General Counsel's compliance with the order. For all of the foregoing reasons, the Respondent's motion to dismiss was denied. After the hearing opened, it was adjourned for more than a month after the General Counsel had put on his case (with the exception of one witness) and before the Respondent had to put on its case. There was no evidence that the Respondent was hindered in any way from presenting its defenses. Accordingly, the Respondent's posttrial motion to dismiss is denied.

B. Background

In 1990,³ the Respondent was the collective-bargaining representative of the Employer's approximately 322 production and maintenance workers. The Respondent and the Employer were parties to a contract which expired on April 29. Prior to that date, the parties engaged in negotiations for a new contract and reached a tentative agreement. On April 29, the union membership voted to reject the proposed contract. In March, the membership had voted by the two-thirds majority required by the Union's constitution and bylaws to authorize a strike, which commenced at 12:01 a.m. on April 30. A picket line authorized by the Respondent was established and maintained at the entrances to the plant. During May, the plant remained open and although there was no new production some finished products were shipped to customers.

On May 18 and 30, the Employer sent letters to the striking employees indicating its intention to resume some production and encouraging the employees to return to work. Negotiations between the parties resumed with the assistance of a Federal mediator on May 23. The Employer began interviewing prospective employees and at a negotiating session on June 5 informed the Union that if the strike continued it would begin hiring permanent replacement workers.

C. Activity at or Near the Picket Line—Mass Picketing, Threats, Interference With Ingress and Egress, Damage to Vehicles

Many of the unfair labor practice allegations involve incidents occurring or originating at or near the picket line au-

² The thrust of Judge Dyer's ruling was that the allegations in the complaint were sufficient to inform the Respondent of what took place and that the motion was denied. Insofar as it called for disclosure of the names of the participants known to the General Counsel, what was important was that the names be provided. Once the information was provided, the General Counsel had met his obligation under the Order. It is immaterial how the information was communicated to the Respondent or that some of the names might have been provided before a particular incident was actually alleged in the original or the amended complaint. While it is not clear what was meant by the statement in the General Counsel's response to the original motion that the names were "unknown," it could refer to those participants whose names had not already been furnished to the Respondent's counsel. I found this did not constitute evidence of bad faith any more than did the Respondent's counsel's failure to acknowledge in his motion that much, if not all, of what he was seeking by it had already been provided.

³ Hereinafter all dates are in 1990 unless otherwise indicated.

thorized and set up by the Respondent. Pickets were assigned to duty in shifts and were paid \$100 per week by the Respondent. According to the testimony of Union President Walter C. Klenzing Sr., two picket line captains were appointed for each shift in order to assure that at least one would be present at every shift. If neither was available, a temporary captain was appointed for a particular shift. Klenzing Sr. was present at the picket line on many occasions. Testimony and photographs of the scene show pickets and union signs at the plant entrances and in the streets nearby.

The replacement workers hired by the Employer began work on June 11. Company Personnel Director Charles Ewing testified that he arrived at the plant at 4:30 a.m. and there were 20 to 30 pickets present. Within a few minutes the number of pickets grew to about 150 in the street and at the various entrances to the plant. As people began to arrive for work at about 6:30 a.m., Ewing observed vehicles which attempted to enter the plant parking lot being surrounded by pickets who rocked and beat on them. He observed one vehicle being pushed back out into the street by pickets and another which had its rear window broken as it left the premises after dropping off a replacement worker. He observed Klenzing Sr. and Union Vice President Denny Ott watching what was going on. Of the 30 replacement workers scheduled to start that morning only 18 entered the plant. During the day, the Employer obtained a state court injunction limiting the number of pickets allowed at the entrances. On June 12, Ewing observed constables passing out copies of the injunction to pickets and posting copies on signs and trees in the area. That afternoon, 150 to 175 pickets gathered and prevented some trucks from entering; however, the arrival of state police in riot gear resulted in the trucks being able to enter the plant. After the injunction was entered he observed that during the next 10 days the pickets exceeded the allowable number and in some instance held up vehicles trying to cross the picket line for from 5 to 10 minutes. He arrived at the plant at 5 a.m. on June 25 and observed 25 to 30 picketers blocking and holding up vehicles trying to enter. That afternoon as the workers were leaving over 100 pickets gathered at the gate through which workers were attempting to exit. The pickets surrounded and stopped their vehicles, cursed at them and told them: "I'm coming to get you, I know where you live." He observed pickets videotaping the workers as they exited and saw Union President Klenzing doing what appeared to be writing down their license numbers, as he would look in the direction of the license plate as vehicles went by, and in some instances those standing nearby would repeat the license numbers. On June 26, he arrived at the plant between 5 and 5:30 a.m. and saw 80 to 90 pickets present. A short time later the number grew to as many as 200, spread out among the entrances. He observed the vehicles of both office and replacement workers and delivery vehicles being stopped, surrounded and beaten on. Klenzing Sr. was present until the group of pickets broke up about 8:30 a.m.

Ewing testified that between June 26 and July 23, he regularly picked up nails scattered at the picket line. At times, after picking up a cupful of nails and disposing of them he would return to the picket line and find more nails when only pickets had been in the area. Ewing said that he was responsible for approving payment for repairs to the tires of

workers crossing the picket line and that on some days there were as many as 30 or 40 flat tires from nails at the plant entrances. Security guard Ralph Blake testified that throughout the summer of 1990 guards were constantly picking up nails thrown in both entrances. There were also nails being dropped in the entrances in the period from February through April 1991 with the worst being near the end of March when he counted as many as 300 nails picked up in a single night. The record contains many nails Blake identified as having been picked up by him at the picket line in April 1991. Striker Victor Diffenderfer who had served as a picket captain before being banned from the picket line testified to seeing guards frequently picking up nails at the main entrance to the plant.

Ewing testified that several pickets made threats to him. Walter Klenzing Jr., the son of the Union's president, told him three different times that he was going to kick his ass either at the picket line or at a football game. Picket Gary Hawbecker also told Ewing he would get him at the football game. Picket Clyde Thomas told him he would not live to see the end of the strike. On July 20, when the north gate was opened to let employees leave, picket Bob Marshall jumped out of a pickup truck and said, "I'm going to get you, you son of a bitch." Ewing testified that picket Ken Flory was at the picket line primarily on Friday afternoons. He would walk in front of vehicles and block them, curse the occupants and say he was going "to kick their ass," that he knew where they lived and that he was coming to their house.

Curtis Culbertson was an office employee who took a job in the shop after the strike began. He testified that on June 27, after leaving work, he noticed that he was being closely followed by another vehicle for several miles. He turned off and drove into his uncle's driveway in order to get behind the vehicle and take down its license number. When he pulled back onto the street the vehicle was stopped about 100 yards up the street in what was his grandparents' driveway. He pulled up behind the vehicle and asked the two occupants, both of whom he recognized as strikers, what the problem was. The driver got out and said he was a "scab." He said he was not and the driver asked if he was "Bumbaugh," the name of a replacement worker. When he said he was not the driver said he was sorry. Culbertson testified that they must have thrown nails in the driveway because the next day the vehicles of his grandfather and his mother's boyfriend got flat tires from nails. He did not see the occupants of the vehicle throw any nails in the driveway and he did not know of any nails being found in the driveway.

Replacement worker Jury Sollenberger testified that when he arrived at the plant on June 11 at 7 a.m., approximately 100 pickets were in the entrance to the parking lot and prevented him from entering. He phoned the plant and was told to try again as the police would be escorting people in. He returned in about an hour and although two police officers tried to help him through the picket line, a mob of people prevented him from entering. He attempted to enter a third time through the main plant entrance and was blocked by pickets. He went to another entrance which was also "completely full of strikers," who broke off the bug shield on his truck and kicked his driver's side door. At that point he abandoned his attempt to enter the plant. Sollenberger also

testified that during the first or second week of July when he was stopped at the entrance by pickets walking in front of his vehicle, picket Larry Thomas, who he knew from a previous employment elsewhere, told him that he should not be coming to work there, that he knew that Sollenberger had two children and while they didn't know where he lived, they were trying to find out.

Replacement worker Charles Reed testified that when he arrived to begin work at about 7 a.m. on June 11, although the police tried to escort him in, he only got halfway across the picket line. There were 75 to 100 pickets who surrounded his truck, pounded on the hood, bent the antenna, and caused over \$1000 damage to his truck. He left after a policeman advised him to try again later. Reed returned to the plant on June 12 but could not get through the line. He did get into work on June 13 after being escorted through 50 to 100 pickets. He testified that about June 26 when he followed Supervisor Dick Houser's vehicle through the picket line, he saw picket Thomas Eyer attempt to scratch it with a key or piece of metal. When he went through the line, Eyer and Carbaugh kicked his car doors. As a result of charges he filed with the police, Reed was reimbursed by Eyer for between \$600 and \$800 for the damage to his vehicle.

Replacement worker Celia Caldwell testified that when she arrived to begin work between 6 and 7 o'clock on June 11 there were approximately 150 to 200 pickets blocking the entrances to the plant and pushing cars out into the street. She drove around the plant four or five times until, while the pickets were ganging up on another car, she was able to slip through the line. That afternoon when she attempted to leave through the main entrance but was prevented from exiting by a gang of pickets. She was able to get out through the north entrance but as she pulled out onto the street a picket broke the mirror on the driver's side of her vehicle. She testified that on June 25 when the car she was riding in as a passenger was stopped in traffic across from the entrance to the plant, picket Charles Cummings exposed himself and made an obscene comment to her. This testimony was corroborated by that of replacement worker Cindy Rook who was driving the car in which Caldwell was riding. Photographs taken at the scene on the morning of June 25 by a professional photographer engaged by the Employer and identified by Caldwell show Rooks' car passing numerous pickets, one of whom is making an obscene gesture at the occupants of the car, and also show Cummings with his hand on the zipper of his pants. The photos show Klenzing Sr. in the background observing what is going on. Caldwell testified that a criminal charge was brought against Cummings as a result of the incident and he was convicted and fined \$150.

Caldwell testified that in early July after leaving the plant she noticed that her car was being followed. After she realized she was being followed and attempted to lose the follower, she reversed directions and eventually got behind the other car and followed it back to the plant in order to photograph the driver. When she left the plant the second time, she was followed by a different individual. She again attempted to lose the follower but was unable to do so and pulled into a convenience store about a mile and a half from the plant. She took out her camera and took photographs of the individual and his license plate. As she did so he held up a piece of brick and told her it was going to go through

her windshield. Both of the individuals were identified as strikers from the photos she took.

Cindy Rook also testified that when she left the plant on her first day of work, she crossed the picket line in the car of Allan Reed. Picket Larry Thomas said to Reed, "Go ahead and fuck her, I already did." He said to Rook, "I didn't need an escort whenever I used to work here." He then commented to other pickets, "Well, she's lucky she's with him or we'd just pull her out of the car and rape her right here." A short time after she started working at the plant, Rook suffered an injury and left work early at about 1:30 p.m. She drove out across the picket line and when she stopped at a stop sign about three or four blocks away on Grant Street she saw the driver and passenger in the vehicle in front of hers, one of whom was Larry Thomas, get out and switch seats. The vehicle with Thomas in it continued to drive slowly in front of her. After she turned onto another street the vehicle came along beside her and Thomas threw a handful of pennies at her window, saying, "here's what you make," and he also said he was going to rape her.

Replacement worker Teresa Mickey testified that when she arrived to begin work at about 6:45 a.m. on June 11 she was unable to enter the parking lot because of the pickets who stood in the entrance and pushed her car back. She went home, phoned the plant, and was told to try again as the police were present. When she returned to the plant entrance she was stopped behind a pickup truck and saw pickets pull the bug shield off the truck. As her car passed through the pickets shouted and spit at her and one jumped onto her hood and pulled the windshield wipers off. Mickey testified that on June 18 as she passed through the picket line on her way to work pickets got one of the doors on the passenger side of her car ajar. After she parked, she found a long scratch in that door which had not been there the previous day. She testified that on July 30 it took her nearly 45 minutes to exit through the picket line after work. As she drove south on Fifth Street a short distance from the plant, near a bridge, she had rolled down her windows and someone threw a cup of soda through the passenger side window into her car.

Carlton Heston worked for the Employer in research and development and was not a member of the bargaining unit. He testified that when he arrived at the main gate at between 7:15 and 7:45 a.m. on June 25 there were 50 to 150 pickets blocking the entrance. He blew his horn to attract the attention of a guard and the pickets surrounded and began slapping his car. He attempted to back out but could not do so. Pickets opened his car door on the passenger side and spit on Heston and his car. When the pickets pulled open his driver's side door he began to pull forward and saw two people rolling off his hood. As he drove into the parking lot he was pursued by "a solid wall of people" who chased him into the building and banged on the door after he entered.

Replacement worker David Hershey testified that when he arrived at the plant on June 13 at about 6:25 a.m. there were about 200 pickets blocking the entrance. They surrounded and beat on his car and it took him about two minutes to get through the line. As he passed through the picket line a picket beat on his window with his fists and with a rock while another, Tom Eyer, scratched the paint on the side of his car, causing damage that cost \$164 to repair. He pressed charges with the police and was eventually reimbursed for

the paint damage by Eyer. Steven Warnick, who was in the car with Hershey, testified that there was a crowd of close to 100 pickets at the entrance. He confirmed that picket Clifford Carbaugh beat on the car window with his hand and a rock. After entering the parking lot they got out of the car and Carbaugh called to him about "getting" him and his family and threatened to kill Warnick. Hershey testified that he heard Carbaugh threaten to get Warnick.

The Employer's safety director, Brad Martin, testified that on the morning of June 26 he observed picket Tom Eyer making contact with vehicles and scratching them with an object as they crossed the picket line. The record contains several photographs taken by Martin which show Eyer's hand making contact with the sides of vehicles and the damage done to the vehicles by Eyer and other pickets that morning. Martin testified that on July 20 he was in the parking lot observing the picket line and had a camera with him in case any problems arose. He saw picket named Sanders pretend to be struck by a replacement worker's vehicle as it was attempting to leave. Sanders lay on the ground and said that he needed an ambulance. Martin had a radio with him and contacted security to request that an ambulance and the police be called. The replacement worker asked Sanders if he needed help and Sanders got up, laughed, and said he was fine. As Martin was inquiring about the ambulance, Sanders ran at Martin and yelled that he was going to kill him. Sanders ran into him, knocked him down and tried to strike him with his fists, but was pulled away by security guards and other picketers. Sanders was found guilty on criminal charges as a result of this incident and also had to reimburse Martin in a civil action for \$89 worth of damage to his camera.

Employee Jeffrey Piper testified that he participated in the strike but returned to work on August 22. About a week before he went back, Tom Eyer came to his house and said that he had heard that Piper was going back. Eyer told Piper that he would get his truck, that it might this week or the next but that he would get the truck. On the morning of the Friday he returned to work, as he crossed the picket line, some pickets bumped against his truck. When he parked he looked at the driver's side of the truck and found a scrape about 3 feet long that had not been there before.

Replacement worker Alan Kiser testified that he began work on June 14. He went to the plant about a week before he started work there. As he was leaving, he passed a group of 25 to 50 pickets at the main entrance and someone threw a sparkplug at his car which passed within a few inches of his head. On June 14, he arrived at the main gate at 6 a.m. and saw "a big mob" of pickets who swarmed around his car and prevented him from entering for about 15 minutes. On June 25 or 26, as he crossed the picket line his car was damaged to the extent of nearly \$1500. The paint was scratched by one picket and another named Stoner kicked and dented the passenger side door and damaged the turn signal on the passenger side. Stoner called him "scab" and said he knew where Kiser lived. Kiser testified that in March 1991 at a gas station on Second Street, Dwight Crawford came up to him as he was getting in his car, reached through the car window, grabbed him by the throat, and threatened to kill him. He knew who Crawford was because he had threatened him previously and he had picked him out in photographs taken of pickets by Brad Martin. Also in March 1991, Kiser was followed several times when he left work

at 11 p.m. On one occasion, the car pulled up beside him at a stop light and the person on the passenger side told him that he knew where Kiser lived and that he was going to kill him. Kiser had seen the person doing picket duty at the plant. Kiser also testified that at the beginning of April 1991, as he was leaving the plant through the main entrance, picketer Dwight Crawford told him that he was going to cut him up and feed him to his dogs one night. Kiser pressed harassment charges against Crawford, there was a hearing before a magistrate, and Crawford was fined. Also in April 1991, as Kiser left the plant and drove down Grant Street about a block, someone dropped several bricks on his car, breaking a window and damaging the car body. He returned to the plant and called the police. After the police were finished, as Kiser was again crossing the picket line, Crawford who was doing picket duty stuck his head in the car window and said that Kiser "had some other windows to be broken."

Jean Pierre Conte is a member of the Employer's board of directors. He went to the plant at 7 a.m. on June 11 and observed a large mob of people forming a wall at the south entrance. Although he was able to follow another car through the picket line, it took longer than 5 minutes for the cars to enter the parking lot. At 11 a.m. he went to the south entrance to assist a delivery truck that was attempting to enter. When he got there he observed about 150 people forming a wall across the entrance. The truck was unable to enter and after it stopped the pickets pounded on it and shouted at the driver. About 10 minutes later the police arrived and walked the truck through the line but before doing so one of the police officers was assaulted by a picket.

Chambersburg police officer John Kriner testified that he and two other police officers went to the plant about 11 a.m. on June 11. He observed a group of more than 50 pickets spread out across the entrance. As they were escorting a truck through the picket line, he was struck across the back by picket Richard Ewan. As he attempted to run away, Ewan was subdued and arrested.

Replacement worker Anthony Cupillari Sr. testified that he arrived for work at about 6 to 6:15 a.m. on June 26 riding in the car of another employee. As they approached the entrance their vehicle was stopped by a line of 30 to 40 pickets. One picket approached the passenger side where Cupillari was seated, said "have a nice day scabbie," and spat chewing tobacco through the window onto Cupillari's forehead.

Maintenance Supervisor Wayne Heiser testified that on June 22 he was standing in the shipping office observing cars driving into the plant. He observed picketer Steven Pogue who worked for him in the maintenance department strewing nails at the entrance. A short time later in his direct testimony, he corrected himself and said this incident occurred on July 6. On cross-examination, he said that he saw Pogue make a throwing motion but did not actually see him throw nails. On June 25, he observed a picket climb up on the cab of a Cressler delivery truck as it came through the main entrance and beat on the driver's door with his closed fists. On June 25 or 26, he observed a truck trying to enter which was blocked by about 20 pickets milling around in the driveway. After about 10 minutes, the driver gave up and pulled away from the plant. A short time later, he observed Carlton Heston trying to cross the picket line and saw about 20 pickets surround the car and begin rocking the car, preventing it

from moving. A picket opened the car door at least twice and, as Heston pulled away, a picket was struck and another was thrown over the hood. A mob of pickets chased Heston into the plant building. On the afternoon of September 26, as Heiser was standing near the picket line observing vehicles exiting, picket Gary Hawbecker said that he would "get" him or "get even" with him. Picketeer Richard Eckenrow who was standing nearby made a comment that you could only push a dog so far into a corner then it will come after you. Later that day, as Heiser was exiting the driveway, Eckenrow lunged at his car and did \$137.50 damage to the paint on his hood. Heiser pressed charges and was reimbursed for the damage.

Heiser testified that at about the time the replacement workers began to work, about June 11 through 30, on an almost daily basis picket Larry Thomas would videotape the replacement workers and their license plates as they crossed the picket line. Photographs taken by Brad Martin on the morning of June 26 show Thomas pointing a video camera at cars crossing the picket line. Heiser testified that in late July, he observed Klenzing Sr. at the picket line appearing to write down license plate numbers of replacement workers' vehicles. A photo taken by Martin at the picket line on the afternoon of July 16 shows Klenzing holding a camera. Martin testified that a few moments after the photo was taken he saw Klenzing point his camera at the rear of a replacement worker's vehicle as it exited and the flash go off. A photo taken by Martin on the afternoon of September 28 shows pickets blocking a truck at the entrance and a picket aiming a camera at the occupant. Ewing testified to seeing picket Robert Melius on several occasions photographing drivers and their license plates as they exited the plant in the afternoon.

Heiser also testified that in early May 1991 sometime around midnight he was called to the plant and found that a door with a full pane of glass near the cafeteria and adjacent to Fifth Avenue had been broken. While he was working to secure the door a passing vehicle slowed down and an occupant, who he identified as Walter Klenzing Jr., asked if he needed any help.

Crawford Zimmerman testified that he was employed as a delivery driver for Service America which provided food service at the plant. At about 6 a.m. on August 16, as Zimmerman attempted to drive his vehicle across the picket line into the main entrance to the plant, a picket shattered the driver's side window with his fist causing glass to enter Zimmerman's eye. Zimmerman identified the attacker as George Kline, who was charged, convicted, and fined as a result. Plant Manager Donald Michael testified that he witnessed the attack on Zimmerman's vehicle by Kline. He said that before smashing the window, Kline had stopped the vehicle by walking in front of it. After he stepped away, the vehicle started forward and Kline unsuccessfully tried to jump in front of it again. As the vehicle passed him, Kline struck and shattered the window.

Michael testified that on June 29 while he was outside observing vehicles entering and exiting the plant at lunch time he saw a picket who was wearing a ski mask, notwithstanding temperature in the 80s or 90s, and carrying a large club, 5 or 6 feet long, which he waved at the vehicles while walking in front of and sometimes stopping them. When the picket later removed the mask, Michael recognized and identified

him as Dennis Sanders. Brad Martin testified that on June 29 he observed Sanders in the ski mask carrying a large object which he was shaking in an intimidating manner. A photograph he took at the picket line in mid-July shows two pickets standing in the entrance with large sticks in their hands. Martin identified a photo he took in mid-July showing a picket with a bandana over his face and carrying a union sign. He testified that the picket was swinging the sign at cars as they exited. Photos taken by Celia Caldwell at the picket line in late June or early July show two different picketeers, one in a ski mask, carrying long sticks. Ewing testified that during the period from June 26 through July 23 he often observed three or four pickets carrying golf clubs, and other clubs and swinging them in a threatening manner at vehicles. Heiser testified that at different times he saw picket Larry Thomas carrying a golf club near the picket line. On one occasion he observed Thomas and other pickets carrying baseball bats, golf clubs and large pieces of wood and swinging them while walking back and forth among vehicles coming and going through the main entrance.

Replacement worker Paul Emerick Jr. testified that as he left the plant on the afternoon of June 22, he was driving on Fifth Street between the two entrances when his car was hit by an egg as he passed a single picket standing there.⁴ He backed up to where the picket had been standing and saw him with a 3-foot club or tree limb in his hand coming towards him along with other pickets. The picket struck his car with the club and dented the roof, while others called for him to get out of the car. Emerick testified that, on July 23, as he drove down Fifth Street after leaving work, there were pickets standing on the grass by the sidewalk just before the bridge. One of the pickets moved his arm in a sweeping motion and he saw objects he thought were nails bouncing in the street ahead of his car. He pulled over and checked his tires but found no nails in them.

Replacement worker Robert Ranck testified that around July 20 he was impeded in crossing the picket line both going in and when leaving. Pickets also spat on the windshield of his truck. Ranck testified that on a day in August he left the plant on a motorcycle and proceeded down Grant Street. As he passed a blue car parked at the curb about 50 to 60 yards from the plant entrance, the car abruptly pulled out into his path, causing him to have to go into the oncoming traffic lane in order to avoid being struck. Ranck pulled over and stopped by the Knouse Company down the street and the blue car pulled through the Knouse Company gate and went around behind the building. When the blue car came back out, he wrote down the license plate number and got a look at the driver. As the car passed him, the driver, who was later identified to him as striker Marlon Perry, called him a scab, used some profanity, and left. Ranck testified that between February and April 1991, he observed several cars that had gotten flat tires from roofing nails while driving into the parking lot and that on one occasion he had gotten three flat tires in his own vehicle while entering. Ranck also testified that in mid-April 1991 as he was crossing the picket line, a picket told him, "We're going to get your ass."

⁴ Celia Caldwell also testified that there were numerous days that eggs were thrown at vehicles as they left the plant.

Replacement worker Jason Ranck testified that the day he began work, about June 12, as he was standing in the parking lot a picket yelled some obscenities to him and said that they knew where he went to church, that they were going to "get" him and were going to "get" his vehicle. He said that one of the pickets attended his church. He testified that in June as he was driving his father's pickup across the picket line, a picket grabbed and broke off the antenna. He also testified that a few days after the antenna incident, as he left the plant and had driven less than a block, near the bridge, his vehicle was struck by a rock. Robert Ranck testified that the antenna was broken off his truck when his son drove it across the picket line. A striker was charged in the incident and reimbursed him for \$34 of damage. A photograph identified by Martin as one he took on June 26 shows the incident.

Employee James Hardy was not a member of the bargaining unit and continued to work during the strike. He testified that on June 15 when he was leaving the plant and stopped while waiting for traffic, he was approached by three pickets, one of whom had a cigarette in his hand. After some conversation, during which the picket with the cigarette put his hands on Hardy's car door, as he pulled away he noticed the picket no longer had the cigarette in his hand. He looked behind his seat and found a burning cigarette which left a burn mark on the vinyl molding. During the conversation in which the pickets asked if he knew what was going on in the plant foundry, Hardy mentioned that he was leaving town that evening. One picket responded that he might wake up the next morning and find his refrigerator missing. Another picket then said that "you never know" and that he could use a new refrigerator.

Replacement worker Terry Wadel testified that on November 12 as he was about to turn into the entrance to the parking lot, picket Nelson Hurst attempted to jump in front of his car and when he was unable to do so kicked the side, denting the passenger door. Hurst eventually had to reimburse him for \$249.10 worth of damage to the car.

Supervisor Elmer Haapala Jr. testified that on February 6, 1991, when he passed the picket line at about 9:15 p.m., he heard a thump on the side of his truck. When he got out he found some abrasions and two chips in the fiberglass panel on the rear passenger side. He testified that in April 1991 when he was leaving the plant at about 12:30 a.m., he saw numerous roofing nails in the north entrance which he stopped to pick up. He testified that while that entrance is near the area of the plant where castings that have nails in them are used, the nails he picked up that night were not the type used in the castings.

Replacement worker Mark Brooks testified that, on a date in December, he left work in the evening and drove to his fiancée's residence in an apartment complex. As he was getting something out of his car, he saw the vehicle of striker Greg Rosenberry parked at the end of the alley. When he made eye contact with the driver, the vehicle pulled away. He testified that in mid-March or April 1991, while crossing the picket line, he got two nails in his tires. Brooks testified that in early April 1991 he observed picket Bill Edwards aiming a video camera at the drivers and license plates of vehicles as they exited the plant. He testified that in January 1991, as he crossed the picket line Rosenberry said to him, "I'd hate to see you have to replace your windshield." He also testified that on a Friday evening in March 1991 as he

was crossing the picket line a picket said to him, "there's 25 ways to kill a man with your bare hands." Another picket, Ken Flory, told him that he wanted "to kick his ass."

Jeff Hautekeete was a security guard assigned to work at the plant from August 1990 to May 1991. He testified that he observed Edwards show up at the picket line for 2 to 4 hours a days in April 1991 and use a camera or a video camera to photograph or videotape drivers and the license plates of vehicles entering and exiting the plant. A series of photographs taken by Hautekeete during the period from April 15 through 19, 1991, shows Edwards at the picket line carrying and pointing a camera or a video camera.

Employee Charles Fickes testified that he participated in the strike but returned to work on August 8. On a day in August as he drove across the picket line while leaving work in the evening, picket Garnet Houpt hollered that he was "going to get" Fickes. He testified that in the fall of 1990 picket Jim Beecham told him, "I'll get you." He also testified that in the fall of 1990, picket Clyde Thomas challenged him to get out of his car and said, "we'll see what kind of a man you are."

Replacement worker Kenneth Horn testified that on a day in August as he was leaving work at about 3:30 p.m., pickets approached his vehicle and one, who was subsequently identified to him as Ken Flory, pointed his finger at Horn and said that he was "going to kill" Horn.

Replacement worker Jeffrey Eckenrode testified that on a day in December, as he was leaving the plant in the afternoon, a picket who he did not know walked up to his car and said, "I am going to kill you and your family."

Replacement worker Randy Zeger testified that on several occasions during January 1991, as he crossed the picket line, picket Robert Melius, with whom he had previously worked at a different employer, said to him he was "going to get" Zeger and his family.

Replacement worker James McAuliffe testified that he began work on the morning of June 11. After seeing the pickets at the gate he parked his pickup on the street a block or two away and walked into the plant. After work that day as he, replacement worker Jim Fry, and another employee were walking out of the parking lot onto the grass next to it, two pickets ran up to them and one grabbed Fry by the arm. This picket was pulled away by the other one who told him he was drunk and was being videotaped. According to McAuliffe, Fry had a red mark and a scratch on his arm where he had been grabbed. Fry did not appear as a witness.⁵ The picket who grabbed Fry was identified by McAuliffe from photographs shown to him at the hearing as Ted Strine. Strine, who testified that he served as a picket captain, admitted to being involved in the incident but said he merely tapped Fry on the shoulder to ask him how it felt to take away their jobs. When he did so the man tried to swing at him with a piece of pipe. Although McAuliffe also testified that on the afternoon of June 12 he found the windshield of his truck which was parked near the plant had been smashed with a hammer, I cannot find any complaint allegation which

⁵ McAuliffe testified that in May 1991 Fry had told him he was going to Alaska. He subsequently received a postcard from Fry saying he was doing well but he was not sure if it was from Alaska or not. As far as he knew, Fry had not returned to the Chambersburg area.

encompasses this incident and will not make any findings concerning it.

Security guard Blake testified that at the end of January 1991 while he was looking for nails in the entrance, he was struck in the back by an object at a time when about 15 pickets were present. He testified that he observed picket Victor Diffenderfer dropping nails in an entrance on April 4, 1991, and took a photograph of him doing so. A short time later, Diffenderfer went to the other entrance and Blake went to see what he was doing there. When he got there, Diffenderfer told Blake he was going to blow him away. Blake testified that one night in April 1991, picket Bob Kochert told him they were going "to get him" and give him "a blanket party," meaning throw a blanket over him and beat him up. Picket Danny Barnhardt stated that they knew where he was staying and a third picket repeated Kochert's threat to Blake.

Debra Stevens testified that on March 27, 1991, she drove her boyfriend, replacement worker Richard Lynch, to the plant and dropped him off. As she left the plant with her two sons in her car, there was a car parked by the entrance and its occupants were talking with some picketers. As she proceeded down Grant Street she saw that the car that had been parked at the plant entrance was closely following her car. When she saw it, she pulled into the Knouse parking lot and the car followed her in. Two occupants, later identified to her as striker Glenn Keith Sr. and his son Glenn Keith Jr. got out of the car and began calling her and her sons "scabs." She told them that none of them were employed at Woods, but they responded that it did not matter as they had crossed the picket line. Keith Sr. pulled open her car door and her 18-year-old son Gary got out of the other side of her car. As he did so, Keith Jr. hit her son and began fighting with him. When she got out to try to assist her son, Keith Sr. grabbed her, held her around the neck and, when she tried to assist her son, the man threw her to the ground. Her younger son got out of the car and went back to the plant to ask the guard to call the police. She got loose and went to her car and took out a billy club. Keith Sr. took it away from her and later Keith Jr. began using it on her son. After the police arrived, Keith Jr. struck a police officer with the club before he was finally subdued by three police officers. Her son was taken by ambulance to the hospital where she was also treated for injuries suffered in the incident. Their medical expenses exceeded \$500. When she again crossed the picket line that night to drop off Lynch, who had accompanied her to the hospital, pickets taunted her about being beaten and tried to take her picture.

Gary Stevens II testified as they exited the plant he noticed that the car that had been sitting at the picket line began to follow their car. When they pulled into the Knouse lot to let the car go by, it followed them in. The two men in the car began calling them "scabs." The driver of the car got out and came up to the driver's side of their car. When Keith Jr. got out of his car and came up to his side of the car, he opened the door. Keith Jr. pulled him out and began yelling at him, bumping and pushing him. His mother came to his side of the car and Keith Sr. threw her to the ground. As he tried to go to her, Keith Jr. pulled his coat up over his head, pushed him down and began dragging him around the parking lot by his hair. The police arrived and subdued both Keith Jr. and Sr. According to Gary, his mother took

out the billy club after the altercation started. He got it from her and struck Keith Sr. with it before Keith Jr. took it away from him and began using it on him.

Plant Manager Michael testified that on the night of March 27 he was notified about the attack on the Stevenses and went to the plant. He drove into the parking lot and as he got out of his car there were three or four pickets standing by the entrance about 40 yards away. One of them said to him, "you are next."

Analysis and Conclusions

The foregoing testimony was credible and, except as hereinafter discussed, largely uncontradicted. This testimony and the other evidence establishes that numerous incidents of misconduct occurred at or near the picket line at the T. B. Wood's plant and were perpetrated by pickets. Given the nature of the incidents, many of which involved large crowds of pickets who were unfamiliar to the replacement workers who testified about them, and the clandestine nature of some of the pickets' actions, it is not surprising that in some instances the witnesses could not identify the perpetrators by name or did so on the basis of hearsay evidence. Under the circumstances, I find that these factors did not detract from the credibility of the testimony nor do they excuse the Respondent from responsibility for the pickets' unlawful actions. *Meat Cutters Local 248 (Milwaukee Meat Packers)*, 222 NLRB 1023, 1034 (1976).

It is undisputed that the Respondent authorized and maintained the picket line at the plant throughout the period during which these incidents occurred. Having done so, it was obligated to maintain control over it or be liable for the consequences of its failure to do so. The rule is longstanding and clear:

[W]here a union authorizes a picket line, it is required to retain control over the picketing. If a union is unwilling or unable to take the necessary steps to control its pickets, it must bear the responsibility for their misconduct. If a union authorizes a picket line without supervision or control, it must bear responsibility for misconduct on the picket line. If a union exercises control and supervision on a picket line, properly disavows and corrects misconduct, naturally such misconduct would not appear to be pursuant to its authority. [*Boilermakers Local 696 (Kargard Co.)*, 196 NLRB 645, 647-648 (1972).]

In the present case, the picket line misconduct was in many instances open, visible, and continuing and done in the presence of Union President Klenzing and/or picket line captains who, according to Klenzing, were present on every shift. There was a marked absence of any evidence that the Union, its officers or agents engaged in supervision of the pickets or took any action whatsoever to disavow or correct their misconduct.⁶ By ignoring obvious and blatant misconduct, the Respondent condoned and encouraged it. *Boilermakers*

⁶While there was evidence that some pickets who were involved in some of the most egregious incidents, thereafter, did not appear at the picket line, there was none to establish that this was the result of any action by the Union. On the contrary, it appears they were removed by court order.

Local 1 (Union Oil), 297 NLRB 524, 525 (1989); *Meat Cutters Local 248 (Milwaukee Meat Packers)*, supra at 1035.

I find that the evidence establishes that on several occasions, including on June 11, 12, 13, 14, 22, 25, and 26 and on other occasions during July and September, the Respondent's pickets restrained and coerced employees exercising rights guaranteed by Section 7 and violated Section 8(b)(1)(A) of the Act by engaging in mass picketing at the entrances to the Wood's plant which interfered with and impeded employees' ingress and/or egress, including the incident on June 11 when they prevented a worker's vehicle from entering by surrounding and pushing it back into the street. *Carpenters (Reeves, Inc.)*, 281 NLRB 493 fn. 3 (1986). The Respondent also violated Section 8(b)(1)(A) when, on some of those occasions as detailed in the credited testimony discussed above, they attacked and inflicted damage on the vehicles of nonstriking workers by climbing on, rocking, denting and scratching them, smashing windows, breaking off mirrors, antennas and other accessories, attempting to open vehicle doors, throwing a lighted cigarette into a worker's vehicle, spitting and throwing objects at vehicles and their occupants. *Lumber Workers Local 3171 (Louisiana-Pacific)*, 274 NLRB 809, 814 (1985); *Laborers Local 721 (Crouse Nuclear Energy Services)*, 256 NLRB 195, 200 (1981). These violations included throwing a sparkplug at the vehicle of Alan Kiser on June 14, hitting the car of Paul Emerick with an egg and a tree limb on June 22 and throwing a soft drink into the car of Teresa Mickey on July 30. While the latter two incidents occurred after the workers had exited through the picket line and driven a short way down the street, both were within view of the picket line, were attributable to the Respondent's pickets and were extensions of picket line activity. *Broadway Hospital*, 244 NLRB 341, 349 (1979).

While the evidence does not conclusively establish the identity of the pickets who threw nails at the plant entrances, except for Diffenderfer on one occasion, it does establish that nails were strewn in the entrances by pickets on numerous occasions and that they caused considerable damage and inconvenience to workers crossing the Union's picket line. These actions violated Section 8(b)(1)(A). *Boilermakers Local 1 (Union Oil)*, supra.

There was uncontroverted evidence that numerous pickets carried sticks and clubs and brandished them in a threatening manner as workers crossed the picket line. The Respondent's brief seems to suggest that this was justified as a defensive measure because of an altercation at the picket line in which a replacement worker struck picket Robert Kochert with a hatchet. Even accepting as true Kochert's version of the incident, that he was the victim of an unwarrantedly violent (although, perhaps, not completely unprovoked) assault, there is nothing to establish that the carrying of clubs by pickets was a result of this incident or that such a response was reasonable or necessary. The repeated carrying and brandishing of these clubs was obviously intended and served to threaten and intimidate workers who crossed the picket line. Doing so violated Section 8(b)(1)(A). *Railway Carmen, Local 543 (North American Car Corp.)*, 248 NLRB 285 (1980).

The evidence establishes that on numerous occasions the Respondent's pickets gave the appearance of photographing or videotaping the license plates and occupants of vehicles as they crossed the picket line and that Union President

Klenzing either recorded or gave the impression that he was recording the license plate numbers of such vehicles. Klenzing's alleged justification, that he was keeping track of how many replacement workers there were or that he was recording only the licenses of persons involved in "incidents on the line," was not credible and cannot serve to justify the repeated instances of photographing and videotaping workers' vehicles. It appears the Respondent's pickets engaged in these activities as a means of instilling fear of retribution in the minds of replacement workers and/or others who did not support the strike. In so doing, the Respondent violated Section 8(b)(1)(A). *Plastic Workers Union Local 18 (Grede Plastics)*, 235 NLRB 363, 382-383 (1978); *Dover Corp.*, 211 NLRB 955, 958 (1974).

I credit the testimony of James McAuliffe that on June 11 as he and another replacement worker Jim Fry were leaving work and walking off the plant premises they were accosted by pickets one of whom, Ted Strine, grabbed Fry by the arm, leaving a red mark and a scratch, and had to be pulled away by the other picket. I did not believe the self-serving testimony of Strine that he merely tapped Fry on the shoulder and was threatened with a piece of pipe. Although Strine identified Victor Diffenderfer as the picket who was with him, Diffenderfer was called as a witness by the Respondent but was not asked to corroborate Strine's version of the incident. I find this unprovoked assault violated Section 8(b)(1)(A).

The credible testimony of Celia Caldwell, Cindy Rook, Alan Kiser, and Curtis Culbertson establishes that after leaving the plant their vehicles were followed by strikers who harassed and threatened them.⁷ These incidents began at and were a direct result of their having crossed the Union's picket line. The threats and harassment directed to these workers were similar to and an extension of those engaged in and condoned by the Union at its picket line. I find that the Respondent is responsible for these incidents and that they violated Section 8(b)(1)(A). *Meat Cutters Local 248 (Milwaukee Meat Packers)*, supra at 1035; *Service Employees (Our Lady of Perpetual Hope Nursing Home)*, 208 NLRB 117, 121-122 (1974). While I find that the following of Culbertson was intended to intimidate him and was unlawful, I do not find that the evidence establishes that the strikers who followed him put nails in his grandfather's driveway. He did not see them do so or find any nails in the driveway. His testimony is not sufficient to establish that the damage allegedly sustained by the vehicles came from nails in that driveway and there is nothing to suggest that the strikers, who apparently did not know his correct identity, would know that the driveway in question belonged to one of his relatives. I also do not find that the evidence establishes that Mark Brooks was followed from the picket line by striker Greg Rosenberry. Although I credit Brooks' testimony that he saw Rosenberry in the vicinity when he arrived at his fiancée's apartment after leaving work, from all that appears, their encounter was a coincidence. Rosenberry did not say anything to Brooks or do any-

⁷ There was testimony by Randy Zeger concerning someone who may have followed him from the plant and yelled at him; however the testimony fails to establish that the person actually followed him, what was said to him or that the person was a striker. I find no violation has been established by this testimony.

thing on that occasion to threaten or harass him. I find that this incident did not involve a violation of the Act.

The credible and almost totally uncontradicted testimony of Caldwell, Rook, Sollenberger, Eckenrode, Brooks, Zeger, Fickes, Kiser, Robert and Jason Ranck, Hershey, and Warnick, described above, establishes that on numerous occasions replacement workers and nonstriking employees were subjected to threats "to get" or "to kill" them and to threats of violence against their person, families and/or property by pickets at the Respondent's picket line.⁸ These threats ranged from the brutally specific, as in the cases of one striker's threats to rape Cindy Rook and another's threat to Jeffrey Eckenrode that he would kill Eckenrode and his family, to the general, as in the cases of strikers who threatened "to get" or beat up various workers who crossed the picket line or told them they knew where they lived, implying, that in addition to the abuse they underwent entering and leaving the plant, they would be subject to more at their homes, and from the offbeat, as in the case of the striker who told Mark Brooks there were 25 ways to kill a man, to the inane, as in the case of the strikers who implied that they were going to steal James Hardy's refrigerator. In each instance described in the testimony workers were threatened with harm because they sought to exercise rights guaranteed them by Section 7 of the Act. The threats served to restrain and coerce them in violation of Section 8(b)(1)(A). Similarly, I find that that obscene remarks directed by a picket to Rook as she crossed the picket line and the picket exposing himself to female replacement workers constituted serious misconduct and violated Section 8(b)(1)(A).

Several of the complaint allegations involve threats and acts of intimidation by strikers directed at nonemployees, guards, and supervisors. The violent and intimidating attacks on delivery driver Zimmerman and police officer Kriner occurred at the picket line during regular working hours and were of such a nature as to be observed or heard about by nonstriking employees as well as the numerous strikers who were present. Such conduct, although directed towards nonemployees, can reasonably be expected to coerce employees who witness or hear about it and regard it as an indication of what may befall them if they fail to support the strike. *NLRB v. Union Nacional de Trabajadores*, 540 F.2d 1, 6 (1st Cir. 1976); *Iron Workers Local 455 (Stokvis Multi-ton)*, 243 NLRB 340, 346 (1979). I find this to be particularly true in the case of the assault on the police officer, a symbol of authority charged with protecting nonstriking employees in connection with their attempts to enter the plant, since it indicated a disregard not only of the Act but of criminal statutes as well. This could not help but send a powerful message to all employees, strikers as well as nonstrikers. Also violative was the damaging of the vehicles of supervisors Haapla and Heiser as they crossed the picket line, the threat by a picket "to get" Heiser and the physical assault on Man-

agement Official Martin by a striker at the picket line. Likewise, the incidents in which security guard Blake was struck in the back by an object when only pickets were present and was threatened by pickets⁹ were violations of Section 8(b)(1)(A). When each of these incidents occurred there were employees, albeit in some cases only other striking employees, present. This constituted restraint and coercion within the meaning of Section 8(b)(1)(A). *Service Employees (Our Lady of Perpetual Help Nursing Home)*, supra at 119; *Boilermakers Local 696 (Kagard Co.)*, supra at 648. I find that the evidence fails to establish that when any of the various threats recounted by Personnel Director Ewing were made to him personally, they were made in the presence of other employees or that any employees learned of these threats. Accordingly, I find that these threats did not constitute violations of Section 8(b)(1)(A). *Plastic Workers Local 18 (Grede Plastics)*, supra at 384. I also find that the evidence fails to establish that the Respondent was responsible for the broken door at the plant in May 1991. The fact that at least one striker passed by while the door was being repaired and commented about it to the supervisor who was attempting to fix it may be suspicious but it does not establish that a striker did the damage or that the Respondent was involved. No evidence was presented concerning the complaint allegation (par. 6(fff)) that in June 1991 a picket threatened "to get" a guard who had summoned police and no violation has been established.

I credit the uncontradicted testimony of Debra and Gary Stevens concerning the assault upon them by striker Glenn Keith Sr. and his son. Insofar as there are differences in their versions of the incident, they appear to be the result of their differing perspectives while being subjected to a violent attack. I do not find that they cast any significant doubt on either's credibility. They were the victims of an attack a short distance from the Respondent's picket line which resulted from their having crossed the line in the course of dropping off replacement worker Richard Lynch at the plant. That by introducing a billy club into the fight the victims may have inadvertently caused an escalation in the degree of violence does not change the fact they were innocent victims of an unprovoked vicious attack. The attack was clearly intended to intimidate Lynch and was of a such nature as to become known to other employees, as evidenced by the fact that Stevens was taunted about the attack by strikers at the picket line a short time later. I find that the Respondent is responsible for this assault which violated Section 8(b)(1)(A). *Boilermakers Local 696 (Kagard Co.)*, supra at 649. I also find that a picket's threat to Plant Manager Michael when he went to the plant that night that he would "be next" was an obvious reference to the assault on the Stevenses. It was made in the presence of two or three other picketing employees and violated Section 8(b)(1)(A).

⁸In a rare instance of contradictory testimony, striker James Beecher denied the threat attributed to him by nonstriker Charles Fickes. While I have no reason to doubt Beecher's denial, particularly in the face of numerous violations that have gone unchallenged, I do not find it establishes that no threat "to get" Fickes was made. He may have been mistaken as to who made the threat, but I credit his testimony that a threat was made by a picket and find that the Respondent was responsible for the violation of Sec. 8(b)(1)(A) occasioned thereby.

⁹I credit the testimony of Blake over by striker Robert Kochert's denial that he threatened Blake with "a blanket party" based on their demeanor while testifying and the fact that I find it unlikely that he would fabricate such an unusual threat. I also credit Blake's testimony over striker Diffenderfer's denials as I found him to be an untrustworthy witness who denied any wrong doing but admitted to being banned from the picket line. Striker Barnhart did not deny making threats to Blake. I found his testimony that he was responding to taunting by Blake lacked credibility.

I find that the evidence establishes that the Respondent is responsible for the threats, harassment, and property damage inflicted on replacement worker Alan Kiser by striker Dwight Crawford and other unidentified assailants. Bricks were thrown at and damaged Kiser's vehicle in close proximity to and immediately after it crossed the picket line. A short time later after Kiser had returned to the plant in his visibly damaged vehicle, Crawford threatened him with additional damage. Crawford had previously accosted and harassed Kiser and had voluntarily admitted to replacement worker Richard Lynch that he had broken windows in Lynch's parked vehicle. I also find that the Respondent is responsible for striker Marlon Perry's pulling his vehicle into the path of replacement worker Robert Ranck's motorcycle as he drove away from the plant after crossing the picket line. Any question I had that this was a coincidence as opposed to an intentional attempt to harass and/or injure a replacement worker was dispelled by Perry's demeanor, his admission that he was aware that the motorcycle belonged to a replacement worker and his cynical tale that he immediately thereafter followed Ranck into the nearby Knouse parking lot after nearly knocking him down because he "was going to Knouse anyway" to get an application. I find that this was yet another unlawful act of harassment which arose at or near the Respondent's picket line and which its inaction served to encourage and condone.

D. Incidents Occurring Away From the Picket Line

Replacement worker Celia Caldwell who, as discussed above, was followed from the picket line in early July and threatened with a brick by a striker, testified that, in October, a stone was thrown through a window at her home and that, in February 1991, her car window was broken. She did not know who was responsible for either incident.

Mark Brooks testified that in December, about 2 weeks after he observed striker Greg Rosenberry near the apartment complex he drove to after work, as he was leaving for work in the early morning he found that his vehicle had been spray-painted and that his back window was "shot out." He did not know who did the damage and to his knowledge there were no witnesses. Brooks said that later when he crossed the picket line, Rosenberry asked him if he enjoyed his Christmas present. In January 1991, as Brooks crossed the picket line one day, Rosenberry said to him, "I'd hate to see you have to replace your windshield." About 2 weeks later, after leaving a lounge where he had spent about an hour in the evening, he found that "somebody had taken a shot at" and put a hole in the windshield of his vehicle which was parked outside. He reported it to the police but never learned who had done the damage. During questioning by counsel for the Charging Party, Brooks testified to another incident right after Christmas, in which another window of his vehicle was "shot out." He also said that after this damage had been repaired, as he was crossing the picket line, Rosenberry said that he had heard that Brooks had another window shot out. Rosenberry testified that he knew who Brooks was and had heckled him at the picket line. He said that Brooks' vehicle had some broken windows and a couple of times he asked if Brooks wanted to buy a window. He denied that he had ever followed Brooks, that he knew where Brooks lived, that he ever broke any glass on Brooks' vehicle, that he ever told Brooks he'd hate to see him have

to replace his windshield or that he asked Brooks if he enjoyed his Christmas present.

Replacement worker Randy Zeger, who testified concerning picket line threats by Robert Melius to get Zeger and his family, also testified that, in January 1991, when he was living with his parents, someone shot a rifle bullet through the front door of their home during the night. The incident was reported to the police but he never found out who did it. In March 1991, he discovered that someone had damaged his truck by throwing a piece of a concrete block at it during the night and on another occasion his tires were slit.

Replacement worker Richard Lynch testified that the reason he needed a ride to work on the March 1991 night that the Stevenses were assaulted after dropping him off at the plant was that his own car had been disabled. Earlier in the month, his car had stopped running and he had to leave it in a store parking lot overnight. When he went back the next morning, he found the windshield and two side windows had been smashed. Some time later, he received a telephone call from striker Dwight Crawford, who admitted doing the damage, apologized and agreed to pay for the windows. Crawford paid him \$700 for the damage.

Employee Amos Neil testified that he had been off work due to an injury when the strike started and that he went back to work for about 6 or 8 weeks during the strike. About a week before he returned to work, a coworker, Lee Beam, came to see him at his home and tried to persuade him to join the strike. About 3 weeks later, during March 1991, a vehicle passed his house going slowly and nails were thrown from the vehicle into his driveway. He did not see who was driving but he recognized the vehicle as belonging to Beam, with whom he had worked for several years and with whom he had gone hunting, fishing, and done other things. His home is located 17 miles from the plant. Neil also testified that, in March 1991, he had driven into an auto parts store parking lot and after he came out of the store his son told him that they had been followed into the lot by Beam's vehicle. He observed Beam and Walter Klenzing Jr. sitting in the vehicle laughing. When he left the parking lot Beam's vehicle followed for a few hundred yards before pulling away when Neil stopped.

Replacement worker Shane Butts testified that on the morning of June 9, 1991, a Sunday, he discovered that one of the windows of his vehicle was broken. When he crossed the picket line the following Wednesday with all the windows of his vehicle open, striker Robert Melius asked him if he had bought a new window yet. Butts said that he had worked with Melius previously at a different plant and that Melius knew where he lived because he had delivered a pizza to Butts' house sometime late in 1990, before Butts started to work for T. B. Wood's. On the following Sunday morning, Butts found that overnight a second vehicle he owned had been damaged. There was a hole the size of a BB in one of the windows which had been shattered.

Replacement worker Fred Dixon testified that in June 1991, on a Sunday morning, he discovered that the rear passenger side window of his car had been shot out by a pellet gun while parked in the driveway overnight. Dixon repaired the damaged window and the following Saturday he sat up all night. At about 3 a.m. on Sunday morning, he observed a blue car drive up and stop near where his car was parked. He saw striker Marlon Perry get out of the passenger side

of the car carrying "a long gun." Before Perry could do anything, Dixon fired a shot into the air and Perry jumped back into the car and fled. Dixon was familiar with Perry because their wives had been friends and Perry's wife had been to the Dixon residence.

Employee Karmon Franklin testified that he participated in the strike for about 6 weeks before he returned to work. On the evening of the day he went back, June 8, he received a phone call from striker Bill Edwards who said that he did not think that Franklin "would stab people in the back like that." Edwards also said that, while he would not do anything to harm Franklin, "he knew people that would." About 10:30 that same evening, the tenant in rental property he owned reported to him that a window had been broken at the property. He said that although he was not living in the house, which is located in Waynesboro, it was listed in his name in the telephone book. Employee Jada Smith testified that she participated in the strike before returning to work in August. On the evening of June 8, Franklin had called and informed her and her boyfriend that he had returned to work that day. Later in the evening, at a bar across from the plant, they told another employee that Franklin had returned to work in the course of a conversation about whether they would also go back. When they returned to their apartment, Smith and her boyfriend were approached in the parking lot by strikers Bob Marshall and Ronnie Liniger, whom they invited inside. They asked if Franklin had crossed the picket line and when they were told that he had, Marshall was "very mad" and wanted to know where Franklin lived because he wanted to do something to him. They looked up Franklin's name in the telephone book and found an address in Waynesboro. Marshall invited Smith and her boyfriend to accompany them but they declined. The following day they saw Marshall at the picket line and when they asked if "they had done" Franklin's house, Marshall said, "yes, we got him real good." There was evidence that Marshall was a picket captain during the strike, but that he did not become one until after he got off "sick and accident," about 2 months into the strike. Marshall admitted to going to Smith's apartment in June and discussing the fact that Franklin had returned to work, but he denied knowing where Franklin lives, going to his house, threatening to damage it or looking up the address in the telephone book. He said that when he left the apartment he walked to his home which was right down the street.

Replacement worker Paul Emerick Jr. testified that on a night at the end of June he was sitting in his car in a parking lot a few blocks from the plant discussing the strike with a girlfriend. As they were talking a man walked near his car and listened to their conversation. When the girl walked away, the man asked him if he worked at T. B. Wood's and if he liked his car. When Emerick answered affirmatively, the man said, "if you go to work tomorrow, you and your car will be history." He has not seen the man since and does not know if he was a striker.

Replacement worker Timothy Baker testified that, in August, after leaving the plant on his way home in his van, he noticed that he was being followed by a red pickup truck. On a two-lane road, the pickup pulled along side his van and began edging over toward him to force him off the road. At some point he saw another vehicle coming toward them and since it did not look like the pickup was going to yield, he

pulled off to the side of the road where he struck a rock and damaged his van. He also suffered a concussion when he struck his head. He did not see who was driving the pickup but later identified Walter Klenzing Jr. from a photograph, as the person riding in the passenger side of the pickup. He said he has seen the pickup parked near the picket line. He reported the incident to the state police but no action has been taken as a result. In his testimony, Klenzing Jr. denied being involved in the incident.

Analysis and Conclusions

None of these incidents occurred at or near the picket line or could be said to have originated there. Although it is alleged that Baker was followed from the picket line, his testimony was that he was "in the habit of watching" to make sure he was not being followed, but he did not notice the red pickup truck behind him until he was more than 10 miles away from the plant. I find that the evidence fails to establish that Baker was followed from the picket line. I found Baker's story about the pickup causing him to leave the road to be less than credible. I also find it strange that although he said that he later saw the same pickup at the picket line, he made no effort to report it to the police. Given these factors and Klenzing's credible denial of involvement, I am unable to conclude that this incident was related to the strike or to find that the Respondent was involved or responsible.

I find no basis to conclude that the Respondent has any responsibility for the threat made to Paul Emerick. The person who made the threat has not been identified as a striker and there is nothing to connect him to the picket line or to the Respondent.

I credit the testimony of Celia Caldwell concerning the damage done to her house and car; however, the evidence does not establish a sufficient nexus between those incidents, which were remote from the picket line, and the threat made to her by a picket more than 3 and 7 months, respectively, before those incidents. There was no evidence to establish who was responsible for the damage and no reasonable basis for considering either of these incidents an extension or continuation of the incident involving the threat or attributing either to the Respondent. I also find that the Respondent is not responsible for the threat by striker Tom Eyer to Jeffrey Piper that if he returned to work Eyer would damage Piper's vehicle. The threat was not made at or near the picket line and there is nothing to suggest that the Respondent was aware that the threat was made or that Eyer was acting as its agent when he spoke to Piper. I have previously found that the Respondent violated Section 8(b)(1)(A) as a result of the more than one instance in which Eyer was responsible for damaging vehicles as they crossed the picket line.

The credible testimony of Zeger concerning the threats by picket Melius creates the suspicion that there is a connection between those threats and the damage done to his house and car and, that of Butts, creates the suspicion that Melius was involved in the damage to his car. Similarly, the credible testimony of Brooks creates a very strong suspicion that striker Rosenberry was involved in the damage done to his car. However, in none of these cases is there sufficient evidence to prove that Melius or Rosenberry was the perpetrator. None of the damage involved in the foregoing incidents can be attributed to the Respondent. *Massachusetts Coastal Seafoods,*

293 NLRB 496, 501 fn. 12 (1989); *Lumber Workers Local 3171 (Louisiana-Pacific)*, supra at 815.

I find that the incident described by Neil in which he encountered strikers in the parking lot of the auto parts store fails to establish that he was followed there or that the strikers did anything that could be considered intimidating or otherwise unlawful. I find that Neil's testimony is sufficient to establish that striker Lee Beam was responsible for throwing nails in Neil's driveway. Neil identified Beam's vehicle as being involved and his testimony establishes that he was familiar with the vehicle and unlikely to be mistaken about it. Beam did not testify and Neil's credible testimony about the incident is uncontradicted. The credible and uncontradicted testimony of Lynch establishes that striker Dwight Crawford was admittedly responsible and made restitution for the damage done to Lynch's vehicle. I find, based on the credited testimony of Dixon, that striker Marlon Perry came to his house with a gun on a Sunday morning in June but was scared off by Dixon before he had a chance to do anything. I do not credit Perry's denials. Based on their demeanor while testifying, I found Dixon to be a believable and trustworthy witness and Perry to be just the opposite. Perry's actions in coming to Dixon's residence during the night and displaying a weapon were intimidating and coercive. I also find there is sufficient circumstantial evidence, given the similar timing and the type of damage done, to conclude that Perry was responsible for shooting out the window in Dixon's vehicle on the previous Saturday night/Sunday morning. While the evidence also creates the suspicion that Perry was responsible for the similar damage done to Butts' vehicle on a Saturday night in June, it is not sufficient to establish that as a fact. Based on the credible testimony of Jada Smith, I find there is sufficient circumstantial evidence to conclude that striker Robert Marshall was responsible for the damage done to the property of nonstriking worker Karmon Franklin in June. The remaining question is whether the Respondent is responsible for the actions of Beam, Crawford, Perry and/or Marshall.

I find that the evidence establishes that, in each of these instances, damage was done to the property of a nonstriking employee or replacement worker because they crossed the Respondent's picket line or otherwise failed to support its position with respect to the strike. However, as noted above, none of these incidents arose at or near the picket line nor could be considered a continuation or extension of picket line conduct. With the exception of Marshall there was no evidence that these strikers held an office with the Union or served as a picket captain. Marshall did serve as a picket captain after he got off sick leave and joined the strike but that was not until after the damage was done to Franklin's property. While I have found that in numerous instances at or near the picket line the Respondent encouraged and condoned the misconduct, the evidence fails to establish that any officer of the Union had advance notice of any of these incidents or, having learned about any, failed to disavow it. The brief for the General Counsel points to no authority to support holding the Respondent responsible for these incidents and the cases cited in the brief for the Charging Party are factually distinguishable. I find that the Respondent cannot be held to have violated Section 8(b)(1)(A) by reason of these incidents. *Teamsters Local 812 (Pepsi-Cola Newburgh)*, 304 NLRB 111 (1991).

CONCLUSIONS OF LAW

1. The Respondent, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 695, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. T. B. Wood's Sons Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. By engaging in mass picketing; interfering with ingress and egress; placing nails in plant entrances; surrounding, climbing on and beating on vehicles; throwing objects at and into vehicles; damaging vehicles; swinging clubs in an intimidating manner; videotaping and photographing employees; videotaping, photographing and/or recording license numbers; physically threatening and spitting at employees; physically assaulting an employee, a supervisor, a policeman and companions of an employee at or near the picket line; threatening to get and to kill employees and to harm their persons, families and property; threatening to rape, making obscene comments and indecent exposure to female employees; following employees from the picket line; threatening and damaging the property of supervisors, a delivery driver and a guard in the presence of employees at or near the picket line; the Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent did not engage in any unfair labor practices alleged in the consolidated complaint not specifically found herein.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. I find that the Respondent's unfair labor practices, which were numerous, varied and serious and continued for an extended period, demonstrate a proclivity to violate the Act as well as a general disregard for employees' fundamental statutory rights and warrant imposition of a broad remedial order. *Teamsters Local 812 (Pepsi-Cola Newburgh)*, supra; *Hickmott Foods*, 242 NLRB 1357 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

The Respondent, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 695, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

¹⁰If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Restraining or coercing employees of T. B. Wood's Sons Company in the exercise of their rights under Section 7 of the Act by engaging in mass picketing; interfering with ingress and egress; placing nails in plant entrances; surrounding, climbing on or beating on vehicles; throwing objects at or into vehicles; damaging vehicles; swinging clubs in an intimidating manner; videotaping or photographing employees; videotaping, photographing and/or recording license numbers; physically threatening or spitting at employees; physically assaulting employees, their companions, supervisors or police at or near the picket line; threatening to get or to kill employees or to harm their persons, families or property; threatening to rape, making obscene comments or indecent exposure to female employees; following employees from the picket line; threatening and damaging the property of supervisors, delivery persons or guards in the presence of employees at or near the picket line.

(b) In any other manner restraining or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its meeting halls and offices in Chambersburg, Pennsylvania, copies of the attached notice marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and return to the Regional Director sufficient copies of the notice for posting by T.B. Wood's Sons Company, if willing, at all places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found herein.

APPENDIX

NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT restrain or coerce employees of T.B. Wood's Sons Company in the exercise of their rights under Section 7 of the National Labor Relations Act, by engaging in the following activities:

1. Mass picketing; blocking ingress and egress, surrounding, climbing on or beating on vehicles; throwing objects at or into vehicles; damaging vehicles; swinging clubs in an intimidating manner; videotaping or photographing employees; and videotaping, photographing or recording license numbers.

2. Physically threatening or spitting at employees; physically assaulting employees, their companions, supervisors or police at or near the picket line; threatening to get or to kill employees, or to harm their persons, families or property; and threatening to rape, making obscene comments or indecent exposure to female employees.

3. Following employees from the picket line.

4. Threatening or damaging property of supervisors, delivery persons, and guards in the presence of employees at or near the picket line.

WE WILL NOT in any other manner restrain or coerce employees of T. B. Wood's Sons Company in the exercise of their rights under Section 7 of the National Labor Relations Act.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 695, AFL-CIO